IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7649 of 1995
with
SPECIAL CIVIL APPLICATION No 7648 of 1995
with
SPECIAL CIVIL APPLICATION NO.7647 of 1995
with
SPECIAL CIVIL APPLICATION NO.7644 OF 1995

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RADHANPUR KELAVANI MANDAL

Versus

VASANTLAL ACHHARATLAL PAREKH

Appearance:

1. Special Civil Application No. 7649 of 1995
MR RN SHAH for Petitioner No. 1-2
MRS NISHA M PARIKH for Respondent No. 1
Mr.N.D.Gohi, AGP for Respondent No. 2-4

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 04/10/2004

ORAL JUDGEMENT

1. Having heard the learned Advocates appearing for the parties, this group of petitions, is being disposed of by this common judgment since they involve identical questions of law and facts.

2. By this group of petitions, the petitioners are challenging a common judgment dated 27th July, 1994 passed by the Gujarat Primary Education Tribunal while disposing of Applications nos.61 to 64 all of 1993.

3. The petitioners in each of these petitions represent K.B.Vakil Vividlakshi Vidyalay (Primary Section), Radhanpur, District Banaskantha. The petitioner no.1 is the Radhanpur Kelavni Mandal which runs the said school and the petitioner no.2 is the Principal of the school in question. The respondent no.1 in each of the petitions is the school teacher who had approached the Primary Education Tribunal by filing respective applications. The case of the respondent no.1 teacher in each of the petitions is that the services of the teachers were terminated by the petitioners herein in violation of the mandatory provisions of Section 40B of the Primary Education Act. The petitioners herein had sought permission for closing down certain classes of the school on account of paucity of students. It is not in dispute that the State authorities had actually granted such an application of the petitioners. At Annexure "A" the petitioners have produced a communication dated 20th October, 1991 by which the petitioners were granted the permission to close down two classes of Standard VI and three classes of Standard VII of the school from the academic year 1992-93.

4. The petitioners herein, therefore, pursuant to the said communication dated 20th October, 1991 passed a Resoultion on 22nd February, 1992 resolving to close down the classes as permitted by the authorities by order dated 20th October, 1991.

5. Consequent upon the decision to close down certain classes, the petitioners found that some of the teachers were surplus, and therefore, wanted to terminate their services, and the petitioner, therefore, by notice dated 20th May, 1992 called upon the respondent no.1 in each of these petitions to show cause within a period of ten days from the date of receipt of this notice as to why their services should not be terminated since the petitioners have decided to close down two classes of

Standard VI and three classes of Standard VII with effect from the academic year 1992-93. The petitioners, therefore, by letter dated 21st May, 1992 approached the District Primary Education Officer and sought permission to terminate the services of the said four teachers who are respondent no.1 in each of these petitions. It is the case of the petitioners that within the statutory period of 45 days since no permission was granted or refused, the petitioners assumed that such a permission is granted and had proceeded to go ahead with the decision to terminate the services of the teachers concerned. Before proceeding further with the narration of the facts, it may be noted that on 2-6-1992, the District Primary Education Officer conveyed to the District Education Officer that the procedure for considering the application of the petitioners seeking approval has to be done by the District Education Officer. It may also be noted that the teachers concerned by their letter dated 26-12-1991 represented to the petitioners that they have not received the order granting permission to the petitioners to reduce the classes and upon receipt of such an order, they will be in a position to reply to the show cause notice, and it was also urged that they have objection to the termination being carried out without following the provisions of Rule 13 of Schedule "F".

6. It appears that the teachers concerned approached the Gujarat Primary Education Tribunal and obtained stay orders against their terminations. Subsequently, however, during the pendency of the proceedings before the Primary Education Tribunal, the petitioners were permitted to offer compensation as provided under Rule 13 of Schedule "F" and the teachers were permitted to accept the same without prejudice to their rights and contentions. Consequently, the services of the respective teachers came to be terminated with effect from 1-3-1991. Ultimately, the Tribunal proceeded to decide the applications of the teachers finally, and vide judgment and order dated 27th July, 1994 which is impugned in this group of petitions found that the action of the petitioners in terminating the services of the teachers is in contravention to the provisions of Section 40B of the Bombay Primary Education Act, and that, therefore, the Tribunal was pleased to quash and set aside the termination orders in question.

7. Appearing for the petitioners, learned Counsel Shri R.N.Shah has submitted that the Primary Education Tribunal has erred in law in quashing the termination orders of the teachers concerned. He has assailed the

judgment of the Tribunal mainly on two grounds. It is the contention of the Counsel for the petitioners that the action of the petitioners of terminating the services of the teachers was pursuant to reducing the number of classes. He submits that when permission to reduce the number of classes was granted by the competent authority, and when such a decision leads to termination of the teachers concerned, there is no necessity to follow any procedure as laid down under Section 40B of the Bombay Primary Education Act. His second contention is that even if it is found that the procedure under Section 40B of the Bombay Primary Education Act is required to be followed, in the facts of the present case, it ought to have been held by the Tribunal that the petitioners had, in fact, followed the entire procedure as laid down under the law.

8. Appearing for the respondent no.1 teacher in each of the petitions, learned Counsel Ms. Nisha M. Parikh has supported the decision of the Education Tribunal and submitted that the action of the petitioners was illegal and rightly quashed by the Tribunal.

9. With respect to the first contention of the learned Counsel for the petitioners, it is not seriously in dispute that the provisions of Section 40B of the Bombay Primary Education Act in so far as the same lay down the procedure to be followed before termination of a teacher are pari materia with the provisions of Section 36 of the Gujarat Secondary Education Act. Learned Counsel for the petitioners has fairly stated that Section 36 of the Gujarat Secondary Education Act have been interpreted by this High Court wherein by judgment dated 8th March, 1979 while deciding Special Civil Application no.652 of 1979, the learned Single Judge of this High Court in the case of SHARDA EDUCATION TRUST v. KIRITKUMAR CHIMANLAL SHELAT AND OTHERS, was pleased to hold that even where the competent authority has granted permission for closing down some of the classes which leads to the action of the management to terminate the services of the teachers, procedure as laid down in Section 36(1) of the Gujarat Secondary Education Tribunal Act is required to be followed. It is also not in dispute that the decision of the learned Single Judge in the case of SHARDA EDUCATION TRUST's case (Supra) came to be confirmed by the Division Bench of this Court vide order dated 25th July, 1979 while deciding L.P.A. no.174 of 1979.

10. I also find that while deciding Special Civil Application no.3271/1992 by judgment dated 29th July,

1994, the learned Single Judge of this High Court in the case of SHREE CHUDA EDUCATION TRUST v. SMT. RAJBALA K. GOHIL AND OTHERS, was pleased to come to the conclusion that the provisions of Section 40B of the Bombay Primary Education Act are pari materia with the provisions of Section 36 of the Gujarat Secondary Education Act. The learned Single Judge in the said decision of SHRI CHUDA EDUCATION TRUST (SUPRA) was, therefore, pleased to apply the ratio of the decision in the case of SHARDA EDUCATION TRUST (SUPRA) to the provisions of Section 40B of the Bombay Primary Education Act also. Learned Counsel for the petitioners, however, has sought to draw distinction with respect to the provisions of Bombay Primary Education Act by urging that in the Bombay Primary Education Act under Schedule "F" to the Bombay Primary Education Rules, it is provided that management of a private school shall not terminate otherwise than as a matter of penalty the services of any permanent trained teacher without previous permission of an Administrative Officer and that the teacher to be so terminated shall be entitled to compensation as provided in the said Rule. It is the case of the counsel for the petitioners that in view of the said provisions under Schedule "F", the provisions of Gujarat Secondary Education Act cannot be held as pari materia with the provisions of Section 40B of the Bombay Primary Education Act since the entire scheme of the Act under the Bombay Primary Education Act is vitally different from that of Gujarat Secondary Education Act. He has, therefore contended that since the petitioners have already complied with the requirements of payment of compensation to the teachers concerned there was no necessity to give an opportunity as required under Section 40B of the Bombay Primary Education Act before terminating the services of such teachers. I am unable to accept the contention of the learned Counsel for the petitioners. Besides being bound by the law of judicial precedents, I am also in respectful agreement with the view of the learned Single Judge expressed in the decision of CHUDA EDUCATION TRUST (Supra) and find that the provisions of Section 40B of the Bombay Primary Education Act are pari materia with the provisions of Section 30 of the Gujarat Secondary Education Act in so far as they pertain to procedure to be followed before terminating the services of a teacher. The presence of Rule 13 under Schedule "F" of the Bombay Primary Education Rules, in my view, would not make any material difference. Compliance thereof would not obviate the requirements of following the procedure laid down under Section 40B of the Bombay Primary Education Act. Obviously, the requirements of Rule 13 of Schedule "F" are in addition to, and not in substitution of the

procedural requirement of Section 40B of the Bombay Primary Education Act, since by way of the schedule the provisions of Section 40B of the Act can be supplemented and not supplanted. In the result, the first contention of the learned Counsel for the petitioners cannot be accepted. I accordingly find that, before bringing about a valid termination of the services of the teachers concerned, the petitioners were required to follow the procedure as laid down under Section 40B of the Bombay Primary Education Act, in the present case, even when the termination was sought to be brought about on account of decision to reduce the classes for which permission was granted by the State authorities and which would have led to closing down the entire primary section.

11. This brings me to the alternative contention of the learned Counsel for the petitioners, namely, that the petitioners had, in fact, followed the procedure laid down under Section 40B of the Bombay Primary Education Act before terminating the services of the teachers concerned.

11.1 As noted earlier, upon being given permission to reduce the classes/ close down the primary section, the petitioners had issued a notice dated 20th May, 1992 to concerned teachers calling upon them to show cause within ten days as to why their services should not be terminated. Immediately thereafter, on 21st May, 1992, the petitioners approached the District Primary Education Officer and sought permission to terminate the services of the teachers concerned. Under Section 40B(1)(a) of the Bombay Primary Education Act, it is provided that no teacher of a recognized private primary school shall be dismissed or removed or reduced in rank; nor his services be otherwise terminated until he has been given by the Manager an opportunity of showing cause against such action proposed to be taken and the action proposed to be taken in regard to him has been approved in writing by the Administrative Officer of the School Board. Under Clause B of subsection (1) of Section 40B, it is provided that the Administrative Officer shall communicate to the Manager of the school in writing his approval or disapproval of the action proposed within a period of 45 days from the date of receipt of his proposal. Subsection (2) of Section 40B provides that where the Administrative Officer fails to communicate either approval or disapproval within a period of 45 days as specified in Clause B of subsection (1), the proposed action shall be deemed to have been approved by the Administrative Officer on the date of expiry of the said period.

11.2 Thus, before terminating the services of a teacher, he has to be given an opportunity of showing cause against such proposed action. In the present case, the show cause notice in question was issued on 20th May, 1992. The respective teacher was given time for a period of ten days to give his explanation as to why his services should not be terminated. Without waiting for any response from the teachers and even without waiting for the said period of ten days to be over the petitioners straightway approached the District Primary Education Officer on the very next day , that is, on 21st May, 1992 seeking approval for the proposed action to terminate the services of the teachers concerned. Thus, the petitioners obviously issued the show cause notice with a prejudged mind and even without ascertaining the response from the teachers proceeded to apply for approval of the proposal to terminate their services. This, in my view, would not meet with the requirement of an opportunity of showing cause being given to the teachers concerned which is a precondition and procedure to be followed before terminating the services of the teachers as provided under Section 40B of the Bombay Primary Education Act. Thereafter also, the representation of the teachers dated 26th December, 1992 does not appear to have been taken into account and the management appears to have proceeded ahead with their decision to terminate their services. In this view of the matter, I find that the Education Tribunal was correct in concluding that the petitioners have not followed the procedure laid down under Section 40B of the Bombay Primary Education Act before terminating the services of the teachers. Therefore, the failure on the part of the District Primary Education Officer to respond to the request of the petitioners to grant approval to the proposed action of termination within a period of 45 days as required under the Act would be inconsequential since I find that from the very inception, the action of the petitioners was illegal, being in contravention of the mandatory requirements of Section 40B of the Bombay Primary Education Act.

11.3 In view of the above discussion, the second contention of the learned Counsel for the petitioners also cannot be accepted.

12. In the result, I find that the Primary Education Tribunal was justified in allowing the application of the respective teachers and the petitions being devoid of merits are hereby rejected. Rule is discharged in each of the petitions.

(Akil Kureshi,J.)

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